
Costs Decision

Site visit made on 27 July 2021

by Jillian Rann BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 September 2021

Costs application in relation to Appeal Ref: APP/V2723/W/21/3273046 Station House, Rimington Avenue, Richmond DL10 4LE

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr & Mrs Whaley for a full award of costs against Richmondshire District Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for construction of a single dwelling within existing residential curtilage of Station House.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party which has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process. The PPG advises that, if it is clear that the local planning authority (LPA) will fail to determine an application within the time limits it should give the applicant a proper explanation. It advises that, in any appeal against non-determination, the LPA should explain their reasons for not reaching a decision within the relevant time limit and why permission would not have been granted had the application been determined within the relevant period.
3. The Council states that its failure to determine the application within the relevant period was due to its decision to commission specialist heritage advice regarding the proposed development, as it did not have such expertise available 'in-house'. I have not been provided with copies of correspondence between the parties during the application. However, it is evident from both parties' submissions that the Council made the appellants aware of its intention to commission that advice. The Council states that it subsequently confirmed to the appellants once it had been commissioned, a statement that has not been contested by the appellants and that I thus have no reason to doubt.
4. The Council was not unreasonable in seeking specialist heritage advice, or in waiting until the officer had reviewed the scheme and visited the site before deciding that such advice was necessary, given the differences between this and the previous scheme. The Council's communication with the appellants could perhaps have been clearer and more proactive with regard to the anticipated timescales for the receipt of that heritage advice once it had been commissioned. However, from the evidence before me I am satisfied that it

was sufficiently clear to the appellants why the Council had not made a decision at the time they decided to exercise their right to appeal against non-determination.

5. Based on that heritage advice and the Council's concerns as articulated in its statement of case, I cannot conclude with any certainty that the Council's concerns would have been resolved, even had the appellants had the opportunity to respond to the heritage advice. Therefore, I am not satisfied that the LPA's actions have led to an appeal which could otherwise have been avoided. Furthermore, as it will be seen from my decision, I have found the proposal unacceptable. Therefore, the Council's actions have not delayed or prevented a development which should clearly have been permitted.
6. The heritage advice and the Council's conclusions based on that advice were not received until after the appellants had lodged the appeal. However, it is not unusual, in an appeal against non-determination, for a Council's full case not to be known when such an appeal is made. It is not unexpected that, having commissioned heritage advice, the Council would await its receipt before finalising its conclusions and setting out its case. In the interests of fairness, I have allowed the appellants the opportunity and an extended deadline to comment on the Council's case, including the heritage statement and its putative reasons for refusal. However, the fact that the Council only set out its case at appeal, having received that heritage advice after the appeal was lodged, does not amount to unreasonable behaviour or the introduction of fresh evidence at a late stage, nor has it led to significant delay at the appeal stage.
7. Although the Council may have referred to seeking 'heritage' advice in its communication with the appellants, issues of design and heritage are not mutually exclusive or divisible from one another. The design and appearance of a development are key factors to be considered when assessing its effect on heritage assets. Therefore, in waiting for the heritage advice before articulating concerns about design, the Council has not acted unreasonably or raised an issue which could have been raised at an earlier stage.
8. The Council's statement clearly explains its concerns about the design of the proposed house, including with reference to specific aspects of its appearance such as the large amounts of glazing and its potential implications in terms of reflection or light spillage. The Council has therefore articulated its concerns and substantiated the reasons why permission would not have been granted had it been in a position to determine the application. Although the appellants indicated their intention to incorporate measures to minimise reflection or light spillage from the glazed areas, very little information was provided as to the detail of such measures. In that context, and in the absence of certainty in that regard, the Council was not unreasonable to conclude as it did, as this is a matter of judgement.
9. Given the above, I conclude that unreasonable behaviour has not been demonstrated in the terms of the PPG. Accordingly, it follows that the appellants have not been put to unnecessary or wasted expense in the appeal process.

Jillian Rann
INSPECTOR